

REMARKS

Summary of Office Action

Claims 1, 3, 4, 6-17, 20-37, 41-56, 60-77, 81-98, 102-119, and 123-134 were pending in this case.

Claims 1, 13, 23-26, 34, 42-45, 53, 63-66, 71, 74, 84-87, 92, 95, 105-108, 113, and 116 were rejected under 35 U.S.C. § 112, first paragraph, as failing to comply with the written description requirement.

Claims 1, 13, 34, 63, 74, 95, and 115 were rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicants regard as the invention.

Claims 1, 3-4, 6-17, 20-37, 41-52, 130, and 131 were rejected under 35 U.S.C. § 103(a) as being anticipated by Gebb U.S. Patent No. 6,067,532 (hereinafter "Gebb"). Claims 53-56, 60-77, 81-98, 102-119, and 123-134 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Gebb as applied in claims 1, 13, and 34 in view of official notice.

Reconsideration of this application in light of the following remarks is hereby respectfully requested.

Summary of Applicants' Reply

Applicants have amended claims 1, 8, 13, 34, 53, 74, 95, and 116 to correct typographical errors and to more particularly define the claimed invention. Applicants have added new claim 135. No new matter has been added and the amendments are fully supported by the original specification (see, e.g., applicants' specification at FIGS. 2 and 3; p. 4, lines 23-30; p. 7, lines 3-5; p. 9, line 13 to p. 10,

line 28). The Examiner's rejections are respectfully traversed.

Summary of In-Person Interview

Applicants wish to thank Examiners Fadok and Zurita for the courtesies extended during the in-person interview with applicant's representative, Joel Weiss, on January 18, 2006. As stated in the Interview Summary, the Examiners and Joel Weiss discussed the above-mentioned patent application specifically with reference to the 35 U.S.C. §§ 112 and 103(a) rejections of the claims.

In particular, applicants' representative discussed the support for the various claim features that were rejected under 35 U.S.C. § 112. In the interest of advancing the prosecution of this application, applicants' representative also discussed potential claim amendments to overcome the 35 U.S.C. § 112 rejections. A tentative agreement was reached concerning the language of the claim amendments, which is reflected in the listing of claims.

Applicants' representative further discussed the claim rejections under 35 U.S.C. § 103(a) in view of Gebb and official notice. Applicants' representative argued the patentability of the claims over Gebb as well as pointed out the improper use of official notice in the rejections. The Examiners indicated that the claims, with the claim amendments, would overcome Gebb but would require a further search.

The Rejections Under 35 U.S.C. § 112, ¶ 1

Claims 1, 13, 23-26, 34, 42-45, 53, 63-66, 71, 74, 84-87, 92, 95, 105-108, 113, and 116 were rejected under 35 U.S.C. § 112, first paragraph, as failing to comply with the written description requirement. This rejection is respectfully traversed.

According to the Examiner, claims 1, 13, 34, 53, 74, 95, and 116 were rejected because the "specifications do not provide support for including both (a) [transfer criterion] and (b) [an interface] in a first customer's request" (Office Action, p. 4). Applicants have deleted these phrases from the claims. Accordingly, this rejection is now moot.

According to the Examiner, claims 23-25, 42-44, 63-65, 84-86, and 105-107 were rejected because the specifications disclose processing the item at an intermediary or a transfer system, but not at a provider (Office Action, pp. 4-5). Applicants respectfully submit that applicants' specification at p. 3, lines 21-24 recites that the intermediary may also be the provider.

According to the Examiner, claims 26, 31, 45, 50, 66, 71, 87, 92, 108, and 113 were rejected because the "disclosures do not show that the fee [provided to a provider] is provided from the payment made by the second consumer" (Office Action, p. 5). Applicants respectfully submit that applicants' specification at p. 3, line 21 to p. 4, line 2; and p. 8, lines 26-32 recites that part of the payment made by the second consumer may be used for a commission payment or a service fee.

Thus the rejections under 35 U.S.C. § 112, first paragraph, should be withdrawn.

The Rejection Under 35 U.S.C. § 112, ¶ 2

Claims 1, 13, 34, 53, 74, 95, and 116 were rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicants regard as the invention. More particularly, the Examiner contended that the phrase "consumer selectable interface" was unclear (Office Action, p. 6). Applicants have deleted this phrase from the claims.

Thus the rejection under 35 U.S.C. § 112, second paragraph, should be withdrawn.

The Rejections Under 35 U.S.C. § 103(a)

Applicants' claimed invention is directed to systems and methods for a first consumer to transfer an item with restricted transferability (e.g., airline ticket, concert ticket, sporting event ticket, option contract rights, hotel reservation, restaurant reservation, car rental) to a second consumer. A first consumer at a consumer computer sends a request to transfer an item with restricted transferability. The first consumer is presented with a plurality of options that include a transfer by auction selection and a transfer by posting an advertisement selection, wherein posting an advertisement includes posting a price. Authorization to transfer the item is requested from the provider of the item. Information about the item is then presented to a second consumer based on the option selected by the first consumer. In response to receiving an offer to purchase the item from the second consumer, the item is transferred from the first consumer to the second consumer.

Applicants respectfully submit that Gebb does not show or suggest

present[ing] to the first consumer a plurality of options, wherein the options include a transfer by auction selection and a transfer by posting an advertisement selection, wherein posting an advertisement comprises posting a price

as recited in independent claims 1, 13, 34, 53, 74, 95, and 116. In fact, the Examiner admits that "Gebb does not explicitly disclose that the system and method incorporates a 'consumer selectable interface'" (Office Action, p. 13, lines 3-4). Instead, in Gebb, the system automatically selects the manner in which an event ticket is to be sold without the seller's input. Gebb describes this throughout the specification, for example, at col. 2, lines 43-50; col. 3, lines 43-10; and col. 7, lines 59-67.

See also applicant's August 13, 2004 Reply to Office Action at pp. 46-50.

The Examiner further asserted that applicants failed to adequately traverse official notice of certain features, which the Examiner now contends is admitted prior art (Office Action, pp. 9-10). Applicants respectfully submit that this assertion of official notice and admitted prior art is improper. First, there is no substantial evidence to support the Examiner's official notice assertion without documentary evidence, and therefore there has been no *prima facie* showing of obviousness. Second, the Examiner's reliance on MPEP § 707.07(a) as to what constitutes an adequate traverse is improper as this section is completely unrelated to official notice. Third, the portion of the MPEP dealing with official notice (MPEP § 2144.03) has now been amended to no longer require traverse by applicants. MPEP § 2144.03.

For at least the foregoing reasons, applicants' independent claims 1, 13, 34, 53, 74, 95, and 116 are in condition for allowance. Claims 3-4, 6-12, 14-17, 20-33, 35-37, 41-52, 54-56, 60-73, 75-77, 81-94, 96-98, 102-115, 117-119, and 123-134, which depend from one of independent claims 1, 13, 34, 53, 74, 95, and 116, are also in condition for allowance.

New Claim 135

Applicants respectfully submit that new claim 135 is allowable at least because it depends from independent claim 116, which has been shown above to be allowable.

Conclusion

Applicants respectfully submit that this application is now in condition for allowance. Accordingly, prompt consideration and allowance of this application are respectfully requested.

Respectfully Submitted,

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